IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3560 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHBHAI BILKIYABHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3560 of 2004

MR AR SHAIKH for Petitioner No. 1

MR AY KOGJE, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/07/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged the detention order passed against him by the detaining authority, by its order dated 30.12.2003

under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, the petitioner was also served with the grounds of detention.

2. In the grounds of detention, there is a reference of three criminal cases, which are registered against the petitioner. The aforesaid cases are registered against the petitioner under the Bombay Prohibition Act. It is alleged that, the petitioner is dealing in foreign liquor. Considering the aforesaid three cases, the detaining authority, without recording statements of any of the witnesses, and after reaching subjective satisfaction about the alleged illegal activities of the petitioner, has detained him under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. At the time of hearing of this petition, learned Advocate for the petitioner has submitted that, the allegation against the petitioner is that, he is dealing in foreign liquor, and only three criminal cases are registered against him under the Bombay Prohibition Act, and that itself is not sufficient for coming to the conclusion that the petitioner is disturbing the public order.

4. Learned Advocate for the petitioner further submitted that, there is a delay in deciding the representation of the petitioner, as the petitioner has made a representation to the Home Minister on 16.2.2004, and which was received by the said department on 19.2.2004, and ultimately it was decided on 4.3.2004 and, therefore, there is inordinate delay on the part of the authority in deciding the representation of the petitioner. The ground of inordinate delay is already taken in para 5.22 of the petition and, therefore, though this point is taken in the petition, neither any reply is filed nor any file is made available for perusal of the court and, therefore, no proper explanation is given by the authority regarding such delay.

5. However, Mr.Kogje, learned AGP, after going through the file, has submitted that the Home Minister had received the representation on 19.2.2004, but the same was despatched by the Home Department to the Concerned Branch on 1.3.2004.

6. The learned Advocate for the petitioner has relied upon an unreported decision of this Court (Coram :

A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein, on the ground of unexplained delay in despatching the representation, this Court has set aside the detention order. In paragraph 6, this Court has observed as under :-

"para 6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on 18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how it was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation."

7. In my view, in view of this inordinate delay in sending the representation of the petitioner to the concerned branch, the petition is required to be allowed on that ground only.

8. In view of the aforesaid facts and circumstances of the case, and in view of the fact that, even the Home Department has not despatched the representation to the concerned branch in time, and the detaining authority has not filed any reply explaining the reasons for such delay and, therefore, under these circumstances, since the representation is not immediately despatched by the concerned authority to the appropriate branch, this petition is required to be allowed, and it is allowed, as it is a settled position that the representation is required to be dealt with promptly.

9. In view of what is stated above, this petition is

allowed. The order of detention dated 30.12.2003 is quashed and set aside. The detenu, Sureshbhai Bilkiyabhai Vasava is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

syed/